

JACK TERWILLIGER

IBLA 81-817

Decided August 3, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented placer mining claims abandoned and void. CA MC 53995 and CA MC 53996.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year following the year of recording with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

APPEARANCES: Jack Terwilliger, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack Terwilliger appeals from the California State Office, Bureau of Land Management (BLM), decision dated June 3, 1981, which declared the unpatented Eel River Jade Mines #1 and #2 placer mining claims, CA MC 53995 and CA MC 53996, abandoned and void because evidence of assessment work or notice of intent to hold the claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2, had not been filed with BLM on or before December 30, 1980.

Appellant alleges that the required proof of assessment work had been mailed to BLM in October 1980, and that if BLM did not receive the instrument, it was lost by the Postal Service.

BLM states that it has checked and cross-checked its records by name of claimant, name of claim, and proofs unidentified by serial number, but has been unable to locate the proof alleged to have been sent by Terwilliger.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation.

Notwithstanding appellant's statement that the document was properly and timely mailed, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*; James E. Yates, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

